

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.424/MP/2019

- Subject : Petition under Section 79 of the Electricity Act, 2003 for execution of order dated 22.7.2019 passed by the Commission in Petition No. 117/MP/2017; and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the order dated 22.7.2019 passed by the Commission in Petition No. 117/MP/2017.
- Date of Hearing : 21.1.2022
- Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member
- Petitioner : DB Power Limited (DBPL)
- Respondents : Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) and Anr.
- Parties Present : Shri Deepak Khurana, Advocate, DBPL
Shri Ashwini Kumar Tak, Advocate, DBPL
Ms. Anusha Nagarajan, Advocate, TANGEDCO

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted the present Petition has been filed, *inter alia*, for execution of the order dated 22.7.2019 passed by the Commission in Petition No. 117/MP/2017. Learned counsel mainly submitted the following:

(a) Pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 6.8.2021, TANGEDCO has made the payment of Rs. 55 crore on 19.8.2021. However, no further payment has been made by TANGEDCO in compliance of the order dated 22.7.2019.

(b) Immediately after the aforesaid direction to TANGEDCO for making payment, it had filed IA No.1252 of 2021 before the Appellate Tribunal for Electricity ('APTEL') seeking urgent hearing of its pending appeal and/or application for stay against the order dated 22.7.2019. However, after arguments, the said IA was withdrawn by TANGEDCO as recorded in APTEL's order dated 13.8.2021.

(c) Thus, there is no embargo on the present execution proceedings and TANGEDCO ought to be directed to make payment of outstanding dues in terms of the Commission's order dated 22.7.2019.

(d) TANGEDCO in its reply has contended that since the order dated 22.7.2019 already stipulates payment of Late Payment Surcharge (LPS) in case of payment not being made within 60 days, the consequence set out in the order would apply in case it does not pay the principal amount. However, the said contention is not tenable as stipulation of payment of LPS does not mean that the said order is not required to be complied with or to delay/ defer the compliance of the order. Such submission of TANGEDCO is an abuse of process of law.

(e) The amount towards capacity charges due and payable by TANGEDCO to the Petitioner in terms of order dated 22.7.2019 up to August 2021 is Rs. 132,98,38,314/-. Further, an amount of Rs. 32,88,64,683/- is due and payable towards LPS. Thus, total outstanding amount due and payable by TANGEDCO works out to Rs. 165,87,02,997/- against which only Rs. 55 crore has been paid. The aforesaid outstanding amount is not disputed.

(f) In addition, payment towards regular energy charges and Change in Law claims are also not being paid by TANGEDCO for which the Petitioner has filed separate petitions seeking appropriate directions to TANGEDCO for making payment.

(g) The Petitioner is under severe financing stress and, accordingly, TANGEDCO may be directed to make the payment towards outstanding dues in terms of order dated 22.7.2019 forthwith.

3. Learned counsel for the Respondent, TANGEDCO mainly submitted the following:

(a) As per direction of the Commission vide Record of Proceedings for the hearing dated 6.8.2021, TANGEDCO has made payment of Rs. 55 crore against the outstanding claims of Rs. 112.25 crore as claimed in the Petition.

(b) While TANGEDCO had moved an IA No. 1252/2021 seeking urgent hearing of its pending appeal and application for stay, APTEL was not inclined to hear the pending appeal out of turn and, accordingly, TANGEDCO did not press its application for urgent listing as recorded by APTEL in its order dated 13.8.2021.

(c) However, TANGEDCO's appeal and the application seeking stay on the order dated 22.7.2019 remain pending before APTEL and are currently listed at Sr. 13 in the list of final hearing matters to be heard by Bench No. 2 of the APTEL.

(d) The order dated 22.7.2019 already stipulates that in case payment is not made within 60 days, TANGEDCO would be required to pay LPS. Hence, in the event TANGEDCO does not succeed in the appeal filed before APTEL, the consequence set out in the order would nevertheless apply.

(e) Claims of the Petitioner in terms of order dated 22.7.2019 are only for differential capacity charges and it is not the case as if TANGEDCO has not been paying any tariff for supply of power by the Petitioner. Also, any direction of making payment of entire outstanding amount as prayed for by the Petitioner would render TANGEDCO's application for seeking stay on the order dated 22.7.2019 infructuous.

(f) The issues of non-payment of energy charges/ Change in Law claims and the subsequent Petitions filed by the Petitioner are extraneous to the present proceedings.

(g) Without prejudice to the above, in the event the Commission deems it appropriate to issue any direction, TANGEDCO may be permitted reasonable time for making payment in instalments.

4. After hearing the learned counsel for the parties, the Commission observed that as on date, there is no stay on the Commission's order dated 22.7.2019 passed in Petition No. 117/MP/2017 and that it is well settled principle of law that mere pendency of an appeal does not operate as stay or suspension of the order appealed against. The Commission also observed that up to August 2021, the total outstanding amount payable by TANGEDCO in terms of order dated 22.7.2019 works out as Rs. 132,98,38,314/- towards principal and Rs. 32,88,64,683/- towards LPS, which has been neither contested nor disputed by TANGEDCO and that till date, TANGEDCO has made the payment of Rs. 55 crore and that too only after direction issued by the Commission vide order dated 6.8.2021. In view of the above, the Commission directed the Respondent, TANGEDCO to pay Rs.70 crore against the invoices raised in terms of the order dated 22.7.2019 within fifteen days of this order, failing which proceedings under Section 142 of the Act would be initiated against officials of TANGEDCO for non-compliance of the direction of the Commission.

5. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

**Sd/
(T.D. Pant)
Joint Chief (Law)**